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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 ALICE SVENSON, individually and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 GOOGLE INC., a Delaware Corporation,
19 and GOOGLE PAYMENT
20 CORPORATION, a Delaware Corporation,

21 Defendants.
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Case No. CV-13-04080-BLF

**DEFENDANTS GOOGLE INC. AND
GOOGLE PAYMENT CORPORATION'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION (CIV. L. R. 79-5(d)(1)(A)
AND 79-5(e))**

Judge: Hon. Beth Labson Freeman

I. ADMINISTRATIVE MOTION TO FILE UNDER SEAL

To the Court and to Plaintiff Alice Svenson and her counsel of record, please take notice that pursuant to Local Rules 7-11 and 79-5, Defendants Google Inc. and Google Payment Corporation (“Defendants”) hereby move the Court for an order permitting Defendants to file under seal certain documents discussed below and submitted by Defendants in support of the following:

(i) Defendants’ Notice of Motion and Motion for Summary Judgment as to Plaintiff’s Individuals Claims; Memorandum of Point and Authorities in Support Thereof (“Motion for Summary Judgment”);

(ii) Defendants’ Notice of Motion and Motion to Exclude the Testimony of Henry Fishkind; Memorandum of Points and Authorities in Support Thereof (“Motion to Exclude”); and

(iii) Defendants’ Opposition to Plaintiff’s Motion for Class Certification (“Opposition to Class Certification”).

This administrative motion is based on the following Memorandum of Points and Authorities, the supporting Declaration of Breena M. Roos in Support of Motion to Seal Defendants Google Inc. and Google Payment Corporation’s Confidential Information (“Roos Decl.”), the concurrently filed documents in support of this motion, the Stipulated Protective Order (ECF No. 82) (“Protective Order”) entered in this action, this Court’s Order Granting in Part and Denying in Part Plaintiff’s Administrative Motion to File Documents Under Seal (Dkt. No. 161) (the “Sealing Order”), and all pleadings and papers on file.

II. MEMORANDUM OF POINTS AND AUTHORITIES

A. Legal Standard

In the Ninth Circuit, the public right of access to court records is not absolute and materials filed in connection with a non-dispositive motion can be sealed if the party moving for sealing establishes “good cause” outweighing that right. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003)). Materials filed in connection with a dispositive motion can be sealed upon a showing of “compelling reasons.” *Id.* When publicly filing

information could become “a vehicle for improper purposes,” compelling reasons exist to justify sealing court records. *Id.* at 1179. For example, the public right of access does not allow court records to be used “as sources of business information that might harm a litigant’s competitive standing.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)) (internal quotation marks omitted).

The Civil Local Rules for the Northern District of California specify that a party seeking sealing must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law.” Civil L.R. 79-5(b). The sealing request must “be narrowly tailored to seek sealing only of sealable material.” *Id.*

Civil Local Rule 79-5(e) states that if a party wants to file a document or portions of a document that another party has designated as confidential pursuant to a protective order, the submitting party must file an administrative motion to seal and submit the applicable documents under seal. Civ. L.R. 79-5(e). To maintain the documents under seal, within four days of the administrative motion to seal’s filing, the designating party must file a declaration establishing that the designated material is sealable. *Id.* The designating party has the burden to establish that the designated information is sealable. Civ. L. R. 79-5(d); *Kamakana*, 447 F.3d at 1178-80.

B. Defendants’ Administrative Motion to Seal Should be Granted

Defendants have reviewed and complied with the Court’s Standing Order re Civil Cases and Local Rule 79-5, and request that the following documents and portions of documents be filed under seal or redacted as follows:

1. Information marked confidential by Defendants

Good cause, (and, in the case of materials filed in connection with Defendants’ Motion for Summary Judgment, compelling reasons) exist to permit Defendants to seal and/or file in redacted form the materials set forth below and discussed in more detail in the Declaration of Breena Roos.

First, pursuant to Local Rule 79-5(d)(1)(A), Defendants request that Exhibits 4, 5, 13, 14, 15, 16, 17, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33 to the Omnibus Declaration of Charles Sipos

1 (“Sipos Declaration”) be sealed. *Id.* ¶¶ 2-5. These exhibits represent certain of Defendants’
 2 internal documents and correspondence produced by Defendants to Plaintiff in this litigation, as
 3 well as certain deposition testimony. *Id.* These exhibits contain confidential, sensitive, and
 4 proprietary information regarding Defendants’ business matters, including Google Wallet and
 5 Google Play, which Defendants designated as “Confidential” or “Highly Confidential” under the
 6 terms of the Parties’ Protective Order. *Id.* ¶ 2. Public disclosure of Defendants’ confidential and
 7 proprietary information would provide insight into Defendants’ confidential business matters and
 8 cause it to suffer competitive harm. *Id.* Moreover, the Court’s prior order sealing documents
 9 approved sealing some exhibits filed by Plaintiff in support of her motion for class certification
 10 that overlap with some of the documents at issue in this motion. *See* Order Granting in Part and
 11 Denying in Part Plaintiff’s Administrative Motion to File Documents Under Seal (the “Sealing
 12 Order”) (Dkt. No. 161) at 2; *see also* Roos Decl. ¶¶ 4-5.

13 ***Second***, Defendants request that certain portions of Exhibit 1 to the Sipos Declaration be
 14 sealed, with redacted versions in the public record. Roos Decl. ¶ 6. Exhibit 1 represents excerpts
 15 of Google’s discovery responses. *Id.* The redacted portions contain confidential, sensitive, and
 16 proprietary information regarding Defendants’ business matters, including Google Wallet and
 17 Google Play, which Defendants designated as “Confidential” under the terms of the Protective
 18 Order. *Id.* In its prior sealing order, the Court approved sealing earlier versions of these
 19 discovery responses. *See* Sealing Order at 3-4 (sealing Balabanian Decl. Exs. 1-13 and 1-36); *see*
 20 *also* Roos Decl. ¶ 6.

21 ***Third***, Defendants request that certain portions of the Motion for Summary Judgment,
 22 Opposition to Class Certification, and Motion to Exclude be sealed, with redacted versions in the
 23 public record. Roos Decl. ¶¶ 7-8. The redactions to the Motion for Summary Judgement,
 24 Opposition to Class Certification, and Motion to Exclude contain information from the report of
 25 Plaintiff’s expert Henry Fishkind, which the Court previously ordered sealed. *See* Sealing Order
 26 at 3-4 (sealing Balabanian Decl. Ex. 1-47); Roos Decl. ¶ 8. The Opposition to Class Certification
 27 also contains confidential, sensitive, and proprietary information derived from Exhibit 1,
 28 discussed above. *Id.*

1 If revealed, the information set forth above that Defendants seek to redact and/or seal,
 2 could harm Defendants' competitive standing. *See generally* Roos Decl. ¶¶ 2, 6. Under these
 3 circumstances, protecting this material from public disclosure is appropriate. *Ctr. for Auto Safety*,
 4 809 F.3d at 1097; *see also Bauer Bros. LLC v. Nike, Inc.*, 2012 WL 1899838, at *3-4 (S.D. Cal.
 5 May 24, 2012) (sealing deposition testimony and documents containing cost analysis relating to
 6 sales, product development, and profits); *Monster, Inc. v. Dolby Labs. Licensing Corp.*, 2013 WL
 7 163774, at *4 (N.D. Cal. Jan. 15, 2013) (sealing exhibits containing information about product
 8 testing requirements, internal testing procedures, and product evaluation).

9 **2. Information marked confidential by Plaintiff**

10 Pursuant to Local Rule 79-5(e), Defendants also request that Exhibit 30 and the
 11 Opposition to Class Certification be sealed, with redacted versions in the public record. *See* Roos
 12 Decl. ¶ 9. Exhibit 30 contains excerpts from the deposition testimony of Plaintiff Alice Svenson
 13 taken in this matter. *Id.* Plaintiff designated this testimony as "Confidential" under the terms of
 14 the Parties' Protective Order, but prior to this filing consented to Defendants filing these excerpts
 15 publicly with Svenson's email address, username, telephone number, and city, state, and zip code
 16 redacted from the public record and filed under seal. *Id.* The Opposition to Class Certification
 17 contains references to this information as well. *Id.* ¶ 8.

18 Accordingly, Defendants respectfully submit this administrative motion pursuant to the
 19 Protective Order, the Court's Standing Order re Civil Cases, and Civil Local Rules 7-11 and 79-5,
 20 and hereby notify Plaintiff of her burden to establish that the redacted information is sealable.

21 **III. CONCLUSION**

22 For the reasons stated above, Defendants request that the Court permit the filing of the
 23 foregoing materials under seal. Pursuant to Civil Local Rule 79-5(d)(1)(B), filed with this
 24 Motion is a proposed order that is narrowly tailored to seal only the sealable material contained in
 25 these documents, which lists in table format each document or portion thereof sought to be sealed.
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DATED: July 8, 2016

PERKINS COIE LLP

By: s/ Charles C. Sipos

Charles C. Sipos

Attorneys for Defendants

Google Inc. and Google Payment Corporation